

"On page 2 section 4, Search and Seizure; Right to Privacy, in line 47 after the period add this new sentence:

"Evidence secured in violation of these provisions shall not be used against any person in any proceedings, either civil or criminal in the courts or before any agencies of the State."

THE CHAIRMAN: The amendment has been submitted by Delegate Bothe. Is there a second to the amendment?

*(Whereupon, the amendment was seconded.)*

THE CHAIRMAN: The amendment is seconded by Delegate Bennett.

The Chair recognizes Delegate Bothe to speak to the amendment.

DELEGATE BOTHE: Mr. Chairman and fellow delegates:

The Committee on Personal Rights has proposed a section 4 which in many respects is analogous to the 4th Amendment of the United States Constitution. An exception is that it adopts language designed to guarantee that the right of privacy, which the Supreme Court has held to be synonymous with the protection against unreasonable searches and seizures, extends to areas which are now in the state of uncertainty. Because the 4th Amendment was placed in the Constitution 200 years ago, no one had known of the various insidious devices by which one's privacy and personal life could be invaded that have now come to the fore in our national life.

If I recall correctly, no questions were asked of Chairman Kiefer regarding our proposal for section 4, which rather astonished me, because I think it is one of the few, if not only places in the proposed new Constitution where very substantial, very personal and very real rights are being advanced to the people of Maryland which may not be available to citizens in any other state.

The subject of search and seizure, as those 80 odd lawyers who are in this room are aware, is an extremely complex one. In the ten minutes which I have to explain my amendment, I could not begin to scratch the surface of it, and I will not attempt to do so.

As lawyers and laymen, we all understand that the protection against unreasonable searches and seizures is the basis on which the privacy of the individual is constitutionally protected. It is the means by

which the Committee on Personal Rights and the Preamble sought to perpetuate it in the new Constitution.

Originally our Committee had the clause which I am proposing now as an amendment in the Majority Report. It was deleted for reasons of which I am not certain. I am certain, however, that the additional rights and the security which they were meant to maintain were deleted along with it. It is one thing to say that people shall have security in their houses and effects and communications. It is quite another to indicate how these rights are to be protected.

Now, Amendment 7 would place in the Constitution of the State the so-called exclusionary rule. It would make that rule applicable not only to criminal cases, but to all proceedings, both civil and criminal, before the courts and the agencies of the State. And I will hastily tell you that the Supreme Court has not gone quite that far. I think eventually they will.

But if we mean to protect the people in their right of privacy, this is the one means of doing it. The rest of the section is utterly without effect if we do not. The exclusionary rule simply means that when evidence is obtained in violation of the 4th Amendment, or section 4 as we will have it in the new Maryland Constitution, that evidence cannot be introduced against a defendant in a court.

As a result of the exclusionary rule which the Supreme Court has imposed upon the states in criminal proceedings, it is true that some criminals go free because the constable blundered. There are cases in which there is evidence in a criminal case of guilt of an individual which cannot be admitted, even though it is valid evidence, because it was obtained illegally. On the surface of it, this seems to be a very wrong thing, that a guilty person should go free because the evidence that was obtained is evidence that violated his personal rights.

But I say to you that in cases since 1914 when the Supreme Court first announced and developed the exclusionary rule, it has been shown that this is the one means by which the right of the individual to private domain can be protected; not only the guilty individual, and they make up a bare fraction of our total population, but the entire citizenry of the State and the nation can only be protected if the law enforcement authorities may not attempt to find incriminating evidence through the use of illegal means. And it is not the guilty who matter in the situation, but the innocent.